



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

CITY OF NORFOLK *v.* WHITE.

March 12, 1908. Rehearing Denied.

[61 S. E. 870.]

Landlord and Tenant—Leases—Removal—Mistake—Liability of Lessee.—Where a lease, renewable forever, given by a city, provides that the lessee shall pay "the public and other taxes" which shall accrue on the property, and the city councils, by resolution, authorize their presidents to execute for the city a renewal of said lease "according to the terms thereof," and the draughtsman, without the authority of the councils, provides in said renewal lease that the lessee shall pay "all taxes, state and national," which shall accrue, the lessee, who, through the recital of the resolution in the renewal lease, takes it with knowledge of the intention that its terms and conditions should be the same as those of the original lease, is bound to pay the taxes assessed on the property in accordance with the original lease.

Appeal from Circuit Court of City of Norfolk.

Suit by White against the city of Norfolk. Decree for complainant. Defendant appeals. Reversed, and bill dismissed.

Loyall, Taylor & White, for appellant.

N. T. Green, Richard McIlwaine, and *Jas. F. Duncan*, for appellee.

HARRISON, J. This case was heard with the case of *City of Norfolk v. J. W. Perry Co., etc.*, 61 S. E. 867, in which the opinion of this court is herewith handed down. In essential facts the cases are substantially the same.

The claim made herein that the right of the city of Norfolk to enforce the tax complained of was res adjudicata was without merit, and properly abandoned at bar.

In this case the original lease contract, dated in 1792, provided that the lessee, his executors, administrators, and assigns, should pay or cause to be paid to the person or persons authorized to receive the same "the public and other taxes which shall accrue on the said land."

In September, 1890, the common and select councils of the city of Norfolk, by resolution, authorized their presidents to execute on behalf of the city "a renewal of the said lease for another term of 99 years, renewable forever, according to the terms thereof." This resolution is recited on the face of the renewal lease contract, dated September, 1890. In this renewal lease the language of the original covenant obliging the lessee to pay "the public and other taxes which shall accrue on the said land" is changed by the substitution therefor of these words, to pay "all taxes, state and national, which shall accrue on the said land." This departure from the terms of the original covenant with

respect to the payment of taxes was made by the draughtsman of the renewal lease without the authority of the councils of the city of Norfolk, as plainly shown by the resolution of such councils, which is recited on the face of the new lease. That resolution expressly provides that the renewal lease shall be according to the terms of the original lease; and it was clearly intended when the renewal lease was executed that the terms and conditions thereof should be the same as those contained in the original lease. It is further clear from the recitation in the renewal lease of the resolution of the councils that the appellee took with knowledge of such intention, and is therefore bound to pay the taxes assessed upon the property according to the terms of the covenant contained in the original lease, and not according to the restricted terms, "state and national taxes," employed in the renewal lease.

The other contentions made herein are the same as those put forward in *City of Norfolk v. J. W. Perry Co., etc.*, and are controlled by the decision in that case.

For the reasons there given, in addition to what is here said, we are of opinion that no right of the appellee under his lease contract has been violated by the tax imposed by the city of Norfolk, and therefore the decree appealed from enjoining the collection of such tax is erroneous, and must be reversed. And this court proceeding to enter such decree as the circuit court should have rendered, it is ordered that the temporary injunction granted herein be dissolved, and the complainant's bill be dismissed.

Reversed.

Note.

See note to preceding case.

GERMAN NAT. INS. CO. *et al.* *v.* VIRGINIA STATE INS. CO.

June 11, 1908.

[61 S. E. 870.]

1. Attorney and Client—Fees—Allowance from Funds in Court.—

A suit to subject bonds held by the State Treasurer, under the express terms of Code 1904, §§ 1271-1274, as security for the payment of policies issued by an insurance company, to the payment of complainant's claim and the claims of such other policy holders as might join in the suit, the company being insolvent, being in effect an ordinary creditors' bill, it was improper to allow complainant's counsel a \$500 fee to be paid out of the bonds.

2. Insurance—State Security Deposit.—Under Code, 1904, § 1271,